

From: Piro, Peter (DPH)
Sent: Friday, January 08, 2010 8:10 AM
To: Lawler, Michael (DPH); Nassif, Julianne (DPH); Salemi, Charles (DPH); O'Brien, Elisabeth (DPH); Saunders, Della (DPH)
Subject: RE: screening ADA initial contact away from the chemists

Is this not how things are working presently for the summonses? I can't remember my last emailed summons so hopefully the word is out. Essex County may need a reminder. Email communication with ADAs may not be perfect but it does achieve the following: it informs the chemist(s) of tentative court dates and initiates preliminary communication with ADAs concerning availability prior to sending the summons.....a good thing. Email is also helpful in communicating where one needs to be first thing in the morning since many ADA are often not available until 4 p.m.....a bad thing for the 6:45 group, so email is a good thing if we can check it at home.

I don't have a problem with all discoveries going first to the office and having them distribute the information to everyone involved. They have database access to information we can not verify. I think that process is working particularly well for the summonses and could free up some chemist time with respect to discovery packets. Or you could just quickly forward the email discovery to the chemists involved and it would be understood that the original recipient would retrieve office cards/drug receipts and send the packet out.

However, yesterday you mentioned not responding to discovery requests without a summons. I don't think we can legally make discovery requests conditional on receiving a summons or even make sending discoveries conditional on the summons. The discovery packet could be instrumental in having the defense plead long before the trial or stipulate to the drug portion of the case, although this may not be particularly true today. Most discovery requests do come with a summons, but because of scheduling they may not come simultaneously. With the current process, chemists unfortunately are prematurely creating court folders for themselves and could never get a summons. (This is becoming less prevalent.) Waiting to distribute requests until a summons appears could reduce duplication but may not work in all cases for the reason stated above. We could, however, encourage ADAs to send discovery requests/summonses together once scheduling has been worked out. We could even keep one copy of everything in a centrally located place for all parties involved instead of everyone having their own copy.

As far as the authenticity of faxed documents versus email, I'm guessing it might be easier to forge a fax than an email. State employees are in the global address directory and the sender can be checked easily. Getting into the directory would take some doing.

From: Lawler, Michael (DPH)
Sent: Thursday, January 07, 2010 10:58 AM
To: Nassif, Julianne (DPH); Salemi, Charles (DPH); O'Brien, Elisabeth (DPH); Saunders, Della (DPH); Piro, Peter (DPH)
Subject: screening ADA initial contact away from the chemists

Prior to Melendez-Diaz, the number of requests for discovery packages was minimal and with one or two requests over the span of a year, we lost no significant analytical time. Chasing back receipts and documents of colleagues a couple of times a year was manageable and did not intrude upon analytical operations. Chemists were able to accommodate requests directly with relative ease. This is no longer the case and we have been evolving a process which facilitates record requests and reduces the responsibility of the chemist in routing the requests.

The evolving mode of having requests come by summons to the evidence office for the first level of action accomplishes the following:

- 1) the chemists are relieved of receiving individual e-mail requests for discovery, which obliges them to:
 - a) bring the request to the attention of the evidence office and identify and alert other chemists involved
 - b) follow up personally with the ADA to get necessary identifiers such as the State Lab number and the defendant's name
- 2) the evidence office may more quickly identify by receipt that a defendant's name is incorrect, the SLI number is incorrect and that more submissions than the one's requested are associated with a defendant
- 3) the evidence office may contact back the DA office requesting the material when a contact person is not identified; that is, the prosecutor's name
- 4) the summons is more readily at hand for addition to the data base
- 5) the distribution of the request to the particular chemists is in the hands of a single individual in the evidence office, not each chemist redundantly seeking to alert necessary parties

I would like to note in particular that in my 20 years of interaction with ADAs, I have required a summons to release this material for the security and integrity of the documents and indeed the privacy of the defendants themselves. I have experienced illegitimate attempts to gain records. An e-mail carries no authority with me as an agent of the Commonwealth. A summons alone identifies the authority of the request.

With respect to e-mails, there is another growing burden, which should be reduced by maintaining the regimen of responding to only summons to the evidence office rather than by e-mail to chemists. My experience as a town commissioner has revealed to me many times how accountable public servants are to their e-mail history (recall the Mennino flap during the election). Public officials must maintain proper archiving and capacity for retrieval of e-mails. Routing the requests by a **single faxed hard copy document** will reduce the growing amount of e-mails and replies, which are subject to retrieval and review.

Finally, I have to draw attention to the DA office which most consistently sends inadequate e-mail requests. The Essex County group are sending e-mails (with or without a summons attached) which most often bear only a police case number, obliging the chemist to start an e-mail chase to account for the handling of the matter. The Essex group routinely fails to even identify a contact person or prosecutor.

In consideration of the thoughts above, I would suggest we draft a specific protocol which delimits the production of discovery documents and court appearances to the single channel, by faxed summons to the evidence office. This single summons must include:

- 1) all associated State Lab numbers
- 2) the defendant's name for a redundant check when drawing out the receipts
- 3) the name and number of a contact person for trouble-shooting problems
- 4) the name and address of the recipient of the discovery package

I am convinced that this approach will reduce the redundant efforts of chemists in the communication chain, gain analytical time for the lab work and reduce our accountability for e-mail communiqués which themselves are subject to discovery.

Other thoughts?